

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YESSUH SUHYES HUSSEY,

Plaintiff,

-against-

AO, PO MICHAEL GABRIELE 3344, ET
AL.,

Defendants.

23-CV-4327 (LTS)

ORDER OF DISMISSAL

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is currently detained in the Eric M. Taylor Center on Rikers Island,¹ brings this *pro se* action under 42 U.S.C. § 1983, asserting claims arising from events occurring at a Guitar Center store in Manhattan on August 3, 2021.² For the following reasons, the complaint is dismissed.

Plaintiff has previously submitted two substantially similar complaints arising from the same events occurring on August 3, 2021, at the Manhattan Guitar Center store. *See Hussey v. Salgado*, No. 23-CV-2905 (PGG) (S.D.N.Y.); *Hussy v. Salgado*, No. 23-CV-4342 (LTS) (S.D.N.Y. June 9, 2023). Because of the considerable overlap in the two prior complaints, by order dated June 9, 2023, the Court directed the Clerk of Court to file the complaint in docket number 23-CV-4342 (LTS) as an amended complaint in docket number 23-CV-2905 (PGG), and to dismiss the action under docket number 23-CV-4342 (LTS) without prejudice to Plaintiff pursuing his claims in the action under docket number 23-CV-2905 (PGG). That case under

¹ At the time he filed this action, Plaintiff was detained in the Anna M. Kross Center on Rikers Island.

² Plaintiff originally filed this action in the United States District Court for the Eastern District of New York. *See Hussey v. AO, PO Michael Gabriele 3344*, No. 23-CV-2154 (PKC) (LB) (May 16, 2023). By order dated May 16, 2023, the Eastern District of New York transferred this action to this court. (ECF 5.)

docketing number 23-CV-2905 (PGG) is currently pending before Judge Paul G. Gardephe. Because this complaint raises the same claims as Plaintiff asserted in the two prior action, no useful purpose would be served by the litigation of this duplicate lawsuit. Therefore, this complaint is dismissed without prejudice to Plaintiff's pending case under docket number 23-CV-2905 (PGG).³

In light of the Court's belief that Plaintiff may have submitted this duplicate complaint in error, the Court directs the Clerk of Court not to charge Plaintiff the \$350.00 filing fee for this action, and the Warden or Superintendent having custody of Plaintiff shall not deduct or encumber funds from Plaintiff's prison trust account for this lawsuit.

CONCLUSOIN

The Court dismisses Plaintiff's complaint as duplicative of No. 23-CV-2905 (PGG).

The Court directs the Clerk of Court not to charge Plaintiff the \$350.00 filing fee for this action.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

³ The complaint in docket number 23-CV-4327 (LTS) appears to list several defendants in the caption who are not named in docket number 23-CV-2905 (PGG), although the complaint does not include any facts explaining what these defendants did or how they were personally involved in violating Plaintiff's rights. If Plaintiff wishes to assert claims against these defendants, he may do so in docket number 23-CV-2905 (PGG), to the extent permitted by Rule 15 of the Federal Rules of Civil Procedure. Any further filings in connection with Plaintiff's claims arising from the August 3, 2021, incident at Guitar Center must be filed only in the action under docket number 23-CV-2905 (PGG).

The Clerk of Court is also directed to enter judgment in this action.

SO ORDERED.

Dated: June 12, 2023
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge